"regular treatment with one of her instruments would probably help the child very considerably."

Our records show that Dr. ————, a graduate of the Los Angeles College of Chiropractice, December 21, 1926, is licensed by the Board of Chiropractic Examiners to practice "chiropractic." So far as we know, she has no medical training. Our records indicate that for the past three or four years she has been operating the "———— Laboratory of Radiotherapy—Home of the Homo-Vibra Ray, ————, Los Angeles." She is said to operate "a sort of laboratory and clinic," using the "homo-vibra ray" (whatever that may be) and other so-called radio modalities, one of which is known as the "———— Short Wave Outfit," which assertedly diagnoses and treats all diseases.

One informant reported at our Los Angeles office September 30, 1938, that she consulted ————, "who she says is diagnosing and treating by radio. The patient puts a drop of blood on a piece of blotting paper and sends it to Mrs. ————, who makes her diagnosis from this specimen."

Our informant related that "One patient, who is in the East some place, sent a drop of blood and ———— diagnosed this case as broken ribs, the fourth and fifth ribs."

The last-mentioned report indicates the possibility that ———— is using an electrical appliance similar to that of the old Abrams electronic machine (also called an oscilloclast), a totally unscientific apparatus, which was the subject of an article printed in the *Journal of the American Medical Association,* September 20, 1924, page 939; also in the *Scientific American,* October, 1923, issue.

Very truly yours,

C. B. PINKHAM, M. D.,
*Secretary-Treasurer.*

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**Subject: American Physicians' Art Association.**

San Francisco, February 10, 1939.

*To the Editor:*—The American Physicians' Art Association, composed of over seven hundred physicians throughout the country who have become proficient in all kinds of art work as an avocation, will conduct their second art exhibit at the City Art Museum of St. Louis next May during the convention of the American Medical Association.

In order to bring this matter to the attention of thousands of your subscribers, we are hoping that you may arrange to publish the notice below in an early issue of your noted and valued journal. Please notice that the *Journal of the American Medical Association* has already published such a notice in their issue of February 4, 1939, Vol. 112, No. 5, page 456.

Thanking you in advance for such a courtesy and hoping you may be able to send us a copy of the issue that may contain such a notice, I beg to remain

521 Flood Building.

Respectfully yours,

FRANCIS H. REDEWILL, M. D.,
*President.*

"The American Physicians' Art Association, composed of members in the United States, Canada, and Hawaii, will hold its second Art Exhibit in the City Art Museum of St. Louis, May 14 to 20, 1939, during the annual session of the American Medical Association. Art pieces will be accepted for this art show in the following classifications: (1) oils, both (a) portrait and (b) landscape; (2) water colors; (3) sculpture; (4) photographic art; (5) etchings; (6) ceramics; (7) pastels; (8) charcoal drawings; (9) book-binding; (10) wood carving; (11) metal work (jewelry). Practically all pieces sent in will be accepted. There will be over sixty valuable prize awards. For details of membership in this Association and rules of the Exhibit, kindly write to Max Thorek, M. D., Secretary, 850 Irving Park Boulevard, Chicago, Illinois, or F. H. Redewill, M. D., President, 521-536 Flood Building, San Francisco."

# MEDICAL JURISPRUDENCE †

*By* HARTLEY F. PEART, ESQ.
*San Francisco*

## OPERATIONS UPON PERSONS LEGALLY INCOMPETENT TO CONSENT TO SAME

It is a general rule of law that a physician or surgeon cannot operate upon a person without his express or implied consent, or if the person to be operated upon is legally incapable of consenting, then without the express or implied consent of one legally competent to consent for him.

Two classes of persons who are, by law, incompetent to give consent are minors and mentally incompetent adults. Consent to operate upon such persons must be obtained from the person duly appointed to act as guardian, or in the case of minors with living parents, from the parents, since they are, in point of law, natural guardians of their children. In early days, another class was recognized, namely, wives. Consent of the husband was necessary then, due to the fact that the wife and husband were considered as one entity, and the husband had the sole right to contract for anything affecting that entity. Today the laws of this and most other states grant to a wife equal rights in regard to binding oneself by contract, and apparently to consenting to surgical operations.

Since two elements, implied consent and emergency, are constantly used to create exceptions to the general rule requiring consent, one can only reach a conclusion as to what a court may do in a particular instance by reviewing decisions handed down in the past.

Typical instances of the application of the general rule are the following:

In *Zoski* vs. *Gaines,* 271 Mich. 1, 260 N. W. 100, defendant physician removed the tonsils of a nine-year-old boy without consent of his parents and at a time when no emergency existed. Defendant was held liable to the boy's parents.

In *Moss* vs. *Risworth,* 222 S. W. 225, a physician was held liable for a similar operation upon an eleven-year-old child although he was accompanied by an adult sister.

And in *Pratt* vs. *Davis,* 224 Ill. 300, 79 N. E. 562, 7 L. R. A. (N. S.) 609, it was held that consent by a man to an operation upon his insane wife for the removal of her uterus and ovaries is not shown by the fact that, after an operation of a minor nature to which he consented, which did not prove successful, he complied with a direction to bring his wife again to the surgeon for treatment.

Evidencing judicial treatment of the question of implied consent, the following cases are enlightening:

In *Theodore* vs. *Ellis,* 141 La. 709, 75 So. 655, the decision in favor of a patient who lost forever his manhood powers by reason of the unnecessary performance of an operation, was based largely upon the ground that he would not have consented if the doctor had informed him concerning, or prescribed, as he failed to do, a well-recognized remedy which might have afforded the desired relief.

In *Van Meter* vs. *Crews,* 149 Ky. 335, 148 S. W. 40, it was held that the conclusion would have been warranted that there was an understanding that the surgeon might operate if he found it necessary to do so, the matter having been talked over with relatives at the hospital as well as with the patient herself.

In *Bakker* vs. *Welsh,* 144 Mich. 632, 108 N. W. 94, 7 L. R. A. (N. S.) 612, it was held that a father could not

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.